

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7653 of 1990

WITH

CIVIL APPLICATION NO. 11099 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -

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2. To be referred to the Reporter or not? -

3. Whether Their Lordships wish to see the fair copy of the judgement? -

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -

5. Whether it is to be circulated to the Civil Judge?

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A.I. PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR IS SUPEHIA for Petitioner

MR GB GHARANIYA, AGP for Respondents.

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 12/02/99

ORAL JUDGEMENT

This petition has been filed for quashing the impugned orders dated 29-7-1987 and 15-2-89 whereby the Government directed not to revise the original fixation of his pay as if his salary has not been revised and to

restore the salary of the petitioner and for a direction not to recover any excess arrears amount of selection grade received by the petitioner.

2. The petitioner was initially appointed on 15-10-66 as a Gujarati Stenographer Gr. II in the General Administration Department, Ahmedabad. The petitioner was promoted by an order dated 16-7-1980 to the post of Gujarati Stenographer Gr. I and the selection grade was given to him. But by an order dated 15-2-1989 the selection grade was withdrawn with retrospective effect as if it was not given at all and the Department also directed for recovery of the excess amount paid to the petitioner on account of grant of selection grade with effect from 1-7-1979.

3. This petitioner and other co-petitioners of other petitions were working as Gujarati Stenographer and they were granted selection grade in 1979 by the order dated 29-7-1987 and 15-2-1989. The selection grade has been withdrawn and excess amount has to be recovered from the amount given to the petitioner and other co-petitioners on account of revision of pay.

4. The petitioner has retired on 31-7-1998. The Department has withheld the amount of gratuity and his final pension has not yet been settled. The contention of the learned counsel for the petitioner is that the selection grade of the petitioner and other co-petitioners has been withdrawn without giving an opportunity of hearing therefor. The action of the respondents in withdrawing the Selection Grade and recovery of the amount of selection grade given to him is illegal, arbitrary and against the principles of natural justice.

5. Learned counsel for the petitioner states that the impugned orders dated 29-7-1987 and 15-2-1989 require to be quashed and the petitioner be given opportunity of hearing before passing the final order regarding withdrawal of selection grade which has already been given to the petitioner in the year 1979. It is also prayed that the authority concerned be directed to consider and decide matter in accordance with law and rules regarding withdrawal of the selection grade within a stipulated period after affording a reasonable opportunity of hearing to the petitioner. Meanwhile, the gratuity amount excluding the amount regarding withdrawal of amount be released in favour of the petitioner.

6. Heard learned counsel for the parties and perused

the relevant record. The orders of withdrawal of selection grade and recovery of amount of selection grade are not sustainable in the eye of law without affording a reasonable opportunity of hearing.

7. Considering the facts and circumstances of this case, the impugned orders dated 29-7-1987 and 15-2-1989 are quashed and the authority concerned is directed to decide the matter regarding the withdrawal of the selection grade after giving a reasonable opportunity of hearing within a period of three months by a speaking order. Meanwhile, gratuity amount of the petitioner excluding the amount regarding withdrawal of selection grade be released in favour of the petitioner within two weeks from the date of presentation of a certified copy of this order, together with interest, if permissible under the law. It is pointed out by the learned counsel for the petitioner that the amount of Rs. 33905/- has already been recovered from the salary of the petitioner. That amount will be adjusted towards the payment of amount of gratuity which is to be paid to the petitioner, as stated above.

7. Accordingly, this petitioner is allowed. Rule is made absolute to the aforesaid extent, with no order as to costs. Interim order, if any, stands vacated.

8. In view of the above order in the main petition, Civil Application No.11099/98 does not survive and accordingly the same is disposed of with no order as to costs.

9 Certified copy of this order be issued to the 8.  
Certified copy of this order be issued to the parties within three days on payment of usual charges.

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/JVSatwara/